

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of the)	WT Docket No. 03-66
Commission’s Rules to Facilitate the Provision of)	RM-10586
Fixed and Mobile Broadband Access, Educational)	
and Other Advanced Services in the 2150-2162)	
and 2500-2690 MHz Bands)	
)	
Part 1 of the Commission’s Rules – Further)	WT Docket No. 03-67
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service and the)	
Instructional Television Fixed Service Amendment)	
of Parts 21 and 74 to Engage in Fixed Two-Way)	
Transmissions)	
)	
Amendment of Parts 21 and 74 of the)	WT Docket No. 02-68
Commission’s Rules with Regard to Licensing in)	RM-9718
the Multipoint Distribution Service and in the)	
Instructional Television Fixed Service for the)	
Gulf of Mexico)	

COMMENTS

Choice Communications, LLC (“Choice”) submits these comments in response to the *BRS/EBS FNPRM* released in the above-captioned proceeding on July 29, 2004.¹

The *BRS/EBS FNPRM* seeks comment on whether to retain the wireless cable exception, set forth in new Section 27.1201(c) (formerly Section 74.990(a)) of the Commission’s rules,² for

¹ See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, [FCC 04-135] (2004) (“*BRS/EBS FNPRM*”).

² 47 C.F.R. § 27.1201(c).

markets that have not transitioned.³ As a Broadband Radio Service (“BRS”) licensee that fully uses all of its licensed BRS spectrum and leases additional Educational Broadband Service (“EBS”) spectrum to provide wireless cable television, digital audio and high-speed Internet access services to both business and residential customers in the U.S. Virgin Islands, Choice has an immediate need for additional spectrum to meet subscriber demand.

The proposed elimination of the wireless cable exception would severely limit Choice’s opportunity for developing new services and providing additional programming. Moreover, EBS licensees in small markets such as the U.S. Virgin Islands have shown little or no interest in acquiring additional EBS spectrum. Consequently, in those markets, the elimination of the wireless cable exception would not promote greater use of vacant EBS spectrum by EBS licensees. Rather, the spectrum likely would remain fallow for an indefinite period rather than be quickly utilized by entities like Choice with a demonstrated need for additional frequencies and an expansion plan waiting for them to become available. The Commission should promptly resume licensing of EBS spectrum in opt-out markets pursuant to the wireless cable exception. Expeditious access to vacant EBS spectrum is critical to Choice’s existing and future operations.

The *BRS/EBS FNPRM* also seeks comment on whether to assess regulatory fees “based on the scope of a BRS licensee’s authorized spectrum use rather than our current approach of assessing a flat fee per call sign.”⁴ Choice fully supports the proposal to assess regulatory fees based on the scope of a licensee’s authorized spectrum use. Specifically, the Commission should assess regulatory fees based on MHz/pops to account for the bandwidth and the potential population that could be served under a license. As the Commission properly noted, this

³ See *BRS/EBS Order* ¶ 350.

⁴ *Id.* ¶ 351.

methodology will “ensure comparable treatment of similarly situated BRS/EBS licensees based on factors more reasonably related to the benefits they receive under their spectrum authorizations rather than assessing a flat fee per call sign.”⁵ Licensees in small rural or remote markets should not be disadvantaged by having to pay the same regulatory fees as licensees in urban markets whose licenses cover a much larger population. Furthermore, as the Commission noted, assessing fees based on MHz/pops is a well-accepted methodology that the Commission repeatedly has used in spectrum auctions to determine upfront payments and bidding eligibility.⁶ Thus, a MHz/pops approach is the most equitable method for assessing regulatory fees based on the benefits received under a license.

A MHz/pops methodology, in conjunction with blanket licensing within a BTA rather than site-based licensing, would improve the time to market and lower costs of operation (administrative and deployment engineering expenses, in particular). The increased efficiency will facilitate the deployment of new and expanded services by Choice and similarly situated entities.

⁵ *Id.* ¶ 357.

⁶ *Id.*

Based on the foregoing, Choice urges the Commission to retain the wireless cable exception and to assess regulatory fees based on MHz/pops covered under a license.

Respectfully submitted,

CHOICE COMMUNICATIONS, LLC

/s/ Douglas J. Minster

Douglas J. Minster
Vice President and General Counsel
Atlantic Tele-Network, Inc.
9719 Estate Thomas
St. Thomas
U.S. Virgin Islands 00802

Cheryl A. Tritt
Phuong N. Pham
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Its Attorneys

Date: January 10, 2005

CERTIFICATE OF SERVICE

I, Theresa Rollins, hereby certify that a copy of the foregoing **COMMENTS** has been served this 10th day of January 2005 by electronic mail on the following:

Bryan Tramont
Office of Chairman Powell
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554
E-Mail: bryan.tramont@fcc.gov

Paul Margie
Office of Commissioner Copps
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554
E-Mail: paul.margie@fcc.gov

Barry Ohlson
Office of Commissioner Adelstein
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554
E-Mail: barry.ohlson@fcc.gov

Catherine Seidel
Office of the Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
E-Mail: cathy.seidel@fcc.gov

Uzoma Onyeije
Office of the Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
E-Mail: uzoma.onyeije@fcc.gov

Jennifer Manner
Office of Commissioner Abernathy
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, DC 20554
E-Mail: jennifer.manner@fcc.gov

Sam Feder
Office of Commissioner Martin
Federal Communications Commission
445 12th Street, S.W., 8th Floor
Washington, D.C. 20554
E-Mail: sam.feder@fcc.gov

John Muleta
Office of the Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
E-Mail: john.muleta@fcc.gov

D'Wana Terry
Office of the Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
E-Mail: dwana.terry@fcc.gov

John Schauble
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
E-Mail: john.schauble@fcc.gov

Nancy Zaczek
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C124
Washington, DC 20554
E-Mail: nancy.zaczek@fcc.gov

Stephen Zak
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C124
Washington, DC 20554
E-Mail: stephen.zak@fcc.gov

Erik Salovarra
Auctions and Spectrum Access Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-A760
Washington, DC 20554
E-Mail: Erik.Salovaara@fcc.gov

Genevieve Ross
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 3-C124
Washington, DC 20554
E-Mail: genevieve.ross@fcc.gov

William Huber
Auctions and Spectrum Access Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., Room 4-A760
Washington, DC 20554
E-Mail: william.huber@fcc.gov

Best Copy and Printing, Inc.
Portals II
445 12th Street, SW
Courtyard Level
Washington, DC 20554
fcc@bcpiweb.com

/s/ Theresa Rollins

Theresa Rollins